

REMARKS

After careful consideration of the outstanding Office Action, this application has been amended accordingly, and favorable reconsideration on the merits thereof is at this time respectfully requested.

The objections to the drawings appearing in paragraphs 1 through 3 of the Office Action have been attended to by this amendment. In addition, reference numeral - 40 - has been added to the drawing because the Examiner required the "can opening (40) must be shown or the features cancelled from the claims." (See outstanding Office Action, paragraph 1.)

The changes reflected in the drawing have also been incorporated in the specification, such as the misspelling of "cup" in the first line of page 5, and "the" to - The - in the second line thereof; the change of the cross-sectional characters of Figure 4 and the cross-hatching of the plastic material of the drinking cap 20 and the additional container 30. The latter avoids the objections presented by the Examiner at page 4, paragraphs 4 and 5 while "clamped" has no longer been used with respect to the claims thereby rendering moot the rejections set forth at page 4, paragraph 6 of the Office Action.

With respect to the rejection of claims 3 through 5 at paragraph 7, the limitation "the additional container" has been provided proper antecedent basis by way of dependent claim 14 reciting "an additional container."

The original claims of record have been cancelled and new independent claims 12, 30 and 35 are directed to a novel and unobvious beverage can which is neither anticipated nor rendered obvious by the prior art of record.

Considering first claim 12, this claim is directed to the specifics of the can body 10, the collar thereof, the end member 16, and, most importantly, the drinking cap 20 which is now defined by including "a substantially cylindrical circumferential wall defined by inner and outer substantially cylindrical circumferential surfaces and axially opposite ends." The drinking cap also includes the recited "internal funnel defined by

a frusto-conical wall having axially opposite relatively large and small terminal edge portions" with the larger of the latter "merging with said inner cylindrical circumferential surface between said axially opposite ends." The smaller terminal peripheral edge of the frusto-conical wall is therefor "in contiguous surrounding relationship to said openable portion." The latter structure is fairly reflected best in Figure 3 and finds no counterpart in the prior art, including the patents to Blow, Jr. et al. (4,098,439), Eads (4,752,016); Berro (6,450,358) and van der Meulen et al. (4,715,510) which were each utilized under Section 102(b) of Title 35.

As the Examiner knows, "a prior art reference anticipates a claim, and thus invalidates it under 35 U.S.C. § 102 if that reference discloses each and every element of the claim." (See Stoller v. Ford Motor Co., 18 USPQ 2d 1545, 1546.) No such element-for-element disclosure is found in any one of the latter four patents.

In the patent to Blow Jr. ('439) the construction of the drinking attachment 22 is actually totally contradictory to that heretofore described, namely, the outer wall 22 is actually frusto-conical above and below an internal cylindrical wall (unnumbered) rising from a wall 24, as is best viewed in Figure 1. The cylindrical wall and a spaced outer portion of the lower frusto-conical wall define a channel 26 for clamping the drinking vessel to a rim or collar of a container. Instead of an internal funnel which is nonexistent, the drinking cup includes the wall 24 and a rib portion 36 which borders an opening 34 of the can end. Obviously, the structure recited in the three independent claims of record find no counterpart in this patent and thus cannot be anticipated thereby.

The patent to Eads ('016) discloses an insulated beverage can holder 12 defined in part by an insulating cover 18 which engages a rim 22 of the can and abuts a can holder 12. The insulating cover 18 has a drinking spout 26 in the form of an aperture which is best illustrated in Figure 3 and does not correspond in any fashion to the funnel recited in the independent claims of record. Thus, the Eads patent is incapable of anticipating independent claims 12, 30 and 35.

The patent to Berro ('358) discloses a beverage can attachment 10 which is utilized for hygienic purposes and includes an opening 20 in a wall for dispensing a beverage 50 therethrough (Figure 5). The patent lacks any structure capable of anticipating the specifics heretofore mentioned with respect to claims 12, 30 and 35 including most importantly the "cylindrical circumferential wall" and the "internal funnel" associated therewith.

The final patent applied by the Examiner is van der Meulen et al. ('510) which includes a set-up piece 1 having an upper frusto-conical wall 3, a lower unnumbered cylindrical wall and a step therebetween. The lower cylindrical wall portion includes "a bottom or disc 5 which by means of a raised angular portion 6 is connected to the cylindrical wall 3. Further, the bottom 5 is having a raised centre portion 7." The configuration of the bottom 5 appears best in each of Figures 2 through 4 of the drawings and the same clearly lacks the frusto-conical wall and the details thereof recited in the claims, such as, for example, the merging of the large peripheral edge portion of the funnel with the inner cylindrical circumferential surface of the claimed drinking cap and the smaller lower terminal end of the funnel contiguous and surrounding an opening of the can body and member. Quite clearly, this patent lacks structure capable of anticipating the newly presented independent claims (claims 12, 30 and 35). In view of the foregoing, the withdrawal of each of the 35 U.S.C. § 102(b) rejections is believed proper and would be most appreciated.

Though the Examiner utilized only Section 102(b) of Title 35 in presenting the rejections of record, it will be readily apparent from the comments heretofore made with respect to the three new independent claims that each is also directed to unobvious subject matter. Hence, each of the independent claims avoid the prior art under 35 U.S.C. § 103(a) irrespective of the patent teachings *as a whole* being utilized singularly or in combination.

In view of the foregoing, the formal allowance of each of independent claims 12, 30 and 35, as well as all of the dependent claims of record, is believed to be in order and is herewith respectfully requested.

In view of the foregoing, the formal allowance of this application at an early date would be most appreciated.

Very respectfully,
DILLER, RAMIK & WIGHT

By: 

Vincent L. Ramik, Reg. 20,663

Merrion Square Suite 101
7345 McWhorter Place
Annandale, Virginia 22003
(703) 642-5705 - telephone
(703) 642-2117 - fax

Attachments: Drawings (Annotated/Replacement Sheets (2))